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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

In re: LITHIUM ION BATTERIES  
ANTITRUST LITIGATION

Case No. 13-MD-02420 YGR

MDL No. 2420

This Document Relates to:

ALL INDIRECT PURCHASER  
ACTIONS

**STIPULATION AND ~~PROPOSED~~  
ORDER DISMISSING CERTAIN  
CLAIMS IN INDIRECT PURCHASER  
PLAINTIFFS' CONSOLIDATED  
AMENDED COMPLAINT**

1 WHEREAS, as directed by the Court, the parties in the Indirect Purchaser actions have met  
 2 and conferred in in an effort to narrow and simplify the issues to be presented on the forthcoming  
 3 Phase II of Defendants' Joint Motion to Dismiss the Indirect Purchaser Plaintiffs' ("IPPs")  
 4 Consolidated Amended Complaint ("IPP-CAC"); and

5 WHEREAS, as part of those meet and confer efforts, Defendants have agreed not to move  
 6 to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure (1) the IPPs' claim under  
 7 the Florida Deceptive and Unfair Trade Practices Act on the grounds that it is not pled with  
 8 sufficient particularity; and (2) the IPPs' claim under Nebraska's Junkin Act on the grounds that  
 9 the IPPs may not obtain damages allegedly incurred before Nebraska repealed the bar on indirect  
 10 purchaser standing set forth by *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), although  
 11 Defendants reserve their right to assert these arguments in other actions in this multi-district  
 12 litigation or any other related case; and

13 WHEREAS, the IPPs have similarly agreed to voluntarily dismiss certain claims asserted  
 14 in the IPP-CAC, as set forth below;

15 IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the  
 16 undersigned Plaintiffs and Defendants, as follows:

17 1. Defendants shall not move to dismiss under Rule 12(b)(6) of the Federal Rules of  
 18 Civil Procedure (1) the IPPs' claim under the Florida Deceptive and Unfair Trade Practices Act on  
 19 the grounds that it is not pled with sufficient particularity; and (2) the IPPs' claim under  
 20 Nebraska's Junkin Act on the grounds that the IPPs may not obtain damages allegedly incurred  
 21 before Nebraska repealed the bar on indirect purchaser standing set forth by *Illinois Brick Co. v.*  
 22 *Illinois*, 431 U.S. 720 (1977), without prejudice to Defendants' right to assert these arguments in  
 23 other actions in this multi-district litigation or any other related case; and

24 2. The following claims in the IPP-CAC are voluntarily dismissed pursuant to Rule  
 25 41(a)(1) of the Federal Rules of Civil Procedure:

26 a. The IPPs' damages claims under Puerto Rico law, *see* IPP-CAC, ¶¶ 293,  
 27 354, 401, 411(v), 466;

-- 1 --

1           b.     The IPPs' damages claims under New Hampshire law to the extent the  
2 alleged damages accrued before January 1, 2008, the effective date of New Hampshire's *Illinois*  
3 *Brick* repealer statute, *see* IPP-CAC, ¶¶ 402, 411(p); and

4           c.     The IPPs' damages claims under Utah law to the extent the alleged damages  
5 accrued before May 1, 2006, the effective date of Utah's *Illinois Brick* repealer statute, *see* IPP-  
6 CAC, ¶¶ 402, 411(z).

7           3.     The above dismissals shall be properly reflected in the IPPs' Second Consolidated  
8 Amended Complaint.

9  
10 **IT IS SO ORDERED.**

11  
12 Dated: March 7, 2014

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT JUDGE

1 DATED: March 5, 2014

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**E-FILING ATTESTATION**

I, Michael W. Scarborough, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the signatories identified above has concurred in this filing.

/s/ Michael W. Scarborough

Michael W. Scarborough